U.S. STEEL CORP.

IBLA 81-464 Decided February 24, 1983

Appeal from decision of Wyoming State Office, Bureau of Land Management, imposing reappraised annual rental charges for communication site right-of-way W-0200657.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Regulations: Applicability -- Rights-of-Way: Act of March 4, 1911

   Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

2. Administrative Procedure: Hearings -- Appraisals -- Communication Sites -- Hearings -- Rights-of-Way: Act of March 4, 1911

   Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has

determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

3. Administrative Procedure: Hearings -- Appraisals -- Communication Sites -- Hearings -- Rights-of-Way: Act of March 4, 1911

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the state office level in accordance with the basic procedural standards set forth in Circle L, Inc., 36 IBLA 260 (1978).

APPEARANCES: W. A. Main, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

By its decision dated February 23, 1981, the Wyoming State Office, Bureau of Land Management (BLM), informed U.S. Steel Corporation (appellant) that the annual rental charge for right-of-way W-0200657 (for a communications site) would be increased to $325 for the period October 31, 1981, through October 30, 1982. No hearing had been afforded prior to this determination. The decision cited 43 CFR 2883.1-2, requiring the payment of fair market rental value for the use and occupancy of the public land. BLM informed the appellant of its right to appeal to the Board. BLM also stated that if an appeal were filed and if appellant desired a hearing, a request for a hearing must be filed with the Board in compliance with 43 CFR 4.415.

The right-of-way, a 200- by 200-foot tract in Fremont County, Wyoming, was granted on October 31, 1962, pursuant to the Act of March 4, 1911, as amended, 43 U.S.C. § 961 (1976), for a term of 50 years. The initial rental commencing in 1962 was $26 per year for 5 years. For the period 1972 to 1977, the annual rental was $125 per year, and thereafter, $125 per year until the rental was increased to $325 per year for the period 1981-82.

Appellant asserts that annual rental of $325 is exorbitant for the non-exclusive right to use a small parcel of land having virtually no value. Appellant contends that "fair market rental value" for the purposes of 43 CFR 2883.1-2 should not, as in this instance, exceed the price at which the property could be sold.

[1, 2] The right-of-way was granted under authority of the Act of March 4, 1911, 43 U.S.C. § 961 (1976). This Act was repealed by section 706 of the Federal Land Policy and Management Act of 1976 (FLPMA). However, section 509(a) of FLPMA, 43 U.S.C. § 1769 (1976), provides that no existing

right-of-way shall be terminated but that the Secretary of the Interior may, with the consent of the holder of the right-of-way, cancel the original right-of-way and in its stead issue a new right-of-way pursuant to Title V of FLPMA.

43 CFR 2802.1-7(e) (1979), formerly 43 CFR 244.21(e) (1962), the regulation in effect when the right-of-way was issued, set forth the procedure for revising charges for use and occupancy of a communications site. That regulation provided:

> At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year. [Emphasis added.]

43 CFR 2803.1-2(d), promulgated to implement the right-of-way provisions of FLPMA, 43 U.S.C. § 1769(a) (1976), allows rental adjustment without a prior hearing. This regulation is applicable to rights-of-way issued under the authority of FLPMA and those preexisting rights-of-way which had been conformed to FLPMA in accordance with 43 U.S.C. § 1769(a) (1976). See Mountain States Telephone & Telegraph Co., 60 IBLA 221 (1981).

In this case a right-of-way has been issued pursuant to the Act of March 4, 1911, and has not been conformed to FLPMA by cancellation of the original right-of-way and issuing a new right-of-way pursuant to Title V of FLPMA. Therefore, no rental increase may be imposed until after reasonable notice and an opportunity for hearing as prescribed by 43 CFR 2802.1-7(e) (1979). BLM's decision informing appellant of its right to file a request for a hearing with the Board after the rental has been determined does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

[3] While the Board may, in its discretion, order that such a hearing be conducted before an Administrative Law Judge pursuant to 43 CFR 4.415, the requirement for a hearing under 43 CFR 2802.1-7(e) (1979) may also be satisfied at the BLM state office level in accordance with the basic procedural standards set forth in Circle L, Inc., 36 IBLA 260 (1978). Mountain States Telephone & Telegraph Co., supra.

In American Telephone & Telegraph Co. (On Reconsideration), 59 IBLA 343 (1981), we concluded that the more appropriate procedure and forum for such hearings would ordinarily be the BLM state office concerned. This is particularly true where, as here, the cost to the Government of conducting the hearing before an Administrative Law Judge would more than negate the benefit which would accrue to the public through any rental increase which might result.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is set aside and the case is remanded to the Wyoming State Office, BLM, for further action consistent herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge